



# Public Employees for Environmental Responsibility

962 Wayne Avenue, Suite 610 • Silver Spring, MD 20910

Phone: (202) 265-PEER • Fax: (202) 265-4192

Email: [info@peer.org](mailto:info@peer.org) • Web: <http://www.peer.org>

April 14, 2017

Texas Disposal Systems, Inc.  
Bob E. Gregory, Registered Agent  
12200 Carl Rd  
Austin, TX 78747

Scott Pruitt, Administrator  
Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Mail Code: 1101A  
Washington, DC 20460

Samuel Coleman, P.E., Region 6 Acting Regional Administrator  
Environmental Protection Agency Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202

Bryan Shaw, Toby Baker, and Jon Niermann, Commissioners, MC 100  
Texas Commission on Environmental Quality, TCEQ  
P.O. Box 13087  
Austin, TX 78711-3087

Ken Paxton, Texas Attorney General  
Office of the Attorney General  
PO Box 12548  
Austin, TX 78711-2548

**By Certified Mail**

*RE: Notice of Clean Water Act Violation and 60-day Notice of Intent to File a Citizen Suit  
Pursuant to 33 U.S.C. § 1365.*

Dear Mr. Gregory and other Addressees:

Public Employees for Environmental Responsibility ("PEER") writes to inform you that Texas Disposal Systems, Inc. ("TDS") is in violation of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* ("Clean Water Act" or "CWA") at the site of the

landfill the company owns and operates located at 3606 FM 1327, Buda, TX 78610 (landfill & recycle center) and 12200 Carl Rd., Creedmoor, TX (on-site sewage facility).

PEER is a 501(c)(3) nonprofit organization and is authorized to do business in Texas. PEER's organizational purposes include assuring the enforcement of federal and state laws aimed at protecting rivers, streams, and wetlands. In Texas, PEER works for the benefit of the public to ensure the protection of streams and wetlands under the CWA. PEER, on its own behalf and on behalf of its members, intends to initiate legal action under the CWA citizen suit provision against TDS unless it promptly complies with the CWA.

As detailed below, PEER has reason to believe that TDS has violated and continues to violate the CWA by disposing of landfill leachate<sup>1</sup> and industrial wastewaters<sup>2</sup> without a National Pollution Discharge Elimination System ("NPDES") or Texas Pollution Discharge Elimination System ("TPDES") permit.

PEER reached this determination after inquiring with the Texas Commission on Environmental Quality ("TCEQ"), which stated it believed that TDS's leachate/industrial wastewater disposal permit was contained within Municipal Solid Waste Permit No. 2123. On September 14, 2016 PEER submitted a Public Information Request to TCEQ for:

- (1) *Municipal Solid Waste (MSW) Permit No. 2123 issued to Texas Disposal Systems*
- (2) *The original application for this permit*

Nothing that we could locate within the responsive records that TCEQ provided in November 2016 shows that TDS is permitted to dispose of landfill leachate and industrial wastewater. Thus, based on this and on its knowledge and belief, PEER alleges that TDS is failing to comply with the CWA by disposing of landfill leachate and industrial wastewater in unpermitted ways resulting in pollution illegally entering waters of the United States.

We hope that you will promptly remedy the problems by obtaining the proper permits. In our experience, companies with similar violations have saved substantial money

---

<sup>1</sup> The term "landfill leachate" refers to the liquid created when, over time, compression of the solid waste and other refuse in the landfill forces liquid from the refuse, or when storm water seeps into the landfill and mixes with the refuse. Landfill leachate takes on the properties of certain constituents of the refuse and is typically very concentrated and high in metal and organic constituents.

<sup>2</sup> The industrial wastewaters to which we refer come from the onsite recycling center and from the facilities where TDS washes and maintains its trucks.



while enhancing their image in the community by simply fixing the problems before litigation becomes necessary. However, if TDS fails to promptly remedy the violations of the CWA, we intend to file a citizen suit against the company and its respective listed agents pursuant to 33 U.S.C. § 1365(b) seeking preliminary and permanent injunctive relief, as well as attorneys' fees and costs. The CWA requires that sixty days prior to the filing of a citizens' suit in federal district court, the complainant provide notice of the alleged violations to the alleged violators, the United States Environmental Protection Agency ("EPA"), and the state in which the alleged violations occur. 33 U.S.C. § 1365(b)(1). Through this letter, PEER fulfills that requirement.

### **Legal Background: CWA**

The objective of the CWA is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. 33 U.S.C. § 1251(a). The CWA prohibits the discharge of pollutants from a point source into waters of the United States except when pursuant to and in compliance with a permit. 33 U.S.C. § 1362.

- "Pollutant" is defined to include "dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water" 33 U.S.C. § 1362(6) *See also* 40 C.F.R. § 122.2.
- A "point source" is any discernible or discreet conveyance, including pipes and ditches, from which pollutants are or may be discharged. Section 502 of the CWA, 33 U.S.C. § 1362(14). In 1987, Congress made clear that the term "point source" includes a landfill leachate collection system. Water Quality Act of 1987, Pub. L. No. 100-4, § 507, 101 Stat. 7, 78 (1987). *See also* 40 C.F.R. § 122.2 (defining "point source" to include "any pipe, ditch, channel, tunnel, conduit, well . . . [or] *landfill leachate collection system* . . . from which pollutants are or may be discharged") (emphasis added).
- The term "waters of the United States" is currently defined at 40 C.F.R. § 122.2 to include not only navigable waters, but also tributaries to those waters as well as adjacent waterbodies such as wetlands, ponds, and impoundments.

The permitting scheme allowing for such discharges appears in federal regulations implementing the CWA and is known as the National Pollution Discharge Elimination System, 40 CFR Part 122.1(b)(1). Through this program, an applicant can seek a NPDES

permit, also known as a CWA § 402 permit. Notably, a NPDES stormwater general permit does not allow the discharge of leachate or other non-stormwater, thus any site that needed to dispose of both stormwater and leachate or industrial waste would need separate NPDES permits for these activities.

The federal Resource Conservation and Recovery Act (“RCRA”) establishes operation and design standards for landfills, including requirements for landfill operators to *collect* landfill leachate. However, RCRA regulations do not address the *disposal of* landfill leachate. Instead, EPA has set effluent guidelines under the CWA that the landfill industry must use to dispose of leachate, typically either by sending it to publicly owned wastewater treatment plants or by treating it so that it can be disposed into surface waters. EPA’s landfill point source category regulations appear at 40 C.F.R. § 445.1 *et seq.* “Landfill wastewater” includes “leachate . . . contaminated storm water and contact washwater from washing trucks, equipment, and railcar exteriors and surface areas which have come in direct contact with solid waste at the landfill facility.” *Id.* § 445.2(f).

#### **Legal Background: Texas authority to administer CWA**

The EPA may delegate CWA authority to individual states. 40 CFR 123.1(f). State programs “must prohibit all point source discharges of pollutants . . . except as authorized by a permit in effect under the State program or under [the NPDES program].” 40 CFR 123.1(g)(1). EPA has delegated CWA authority to Texas, allowing TCEQ to issue permits including NPDES permits. *See* 33 U.S.C. § 1313(a), (d); Tex. Water Code § 26.023; *see also id.* § 5.013(a)(3) (granting TCEQ general jurisdiction over Texas’ “water quality program including issuance of permits, enforcement of water quality rules, standards, orders, and permits, and water quality planning”). The TPDES program is Texas’ NPDES equivalent.

The Texas Water Code (“TWC”) forbids, except as authorized by TCEQ, the discharge of “sewage, municipal waste, recreational waste, agricultural waste, or industrial waste into or adjacent to any water in the state,” § 15.121(a)(1), including from a point source, *id.* § 26.121(d). No person may “discharge other waste into or adjacent to any water in the state which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state” unless in compliance with a certified water quality management plan approved by the State Soil and



Water Conservation Board or water pollution and abatement plan approved by TCEQ. *Id.* § 26.121(a)(2). Nor may a person “commit any other act or engage in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state,” *Id.* § 26.121(a)(3).

TWC § 26.001 defines “water in the state” to include “groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks . . . inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.”

Additionally, 30 TAC § 330.205 requires all wastewaters that municipal solid waste storage and processing units generate to “be managed in accordance with § 330.207 of this title (relating to Contaminated Water Management).” In turn, 30 TAC § 330.207(a) provides, “All liquids resulting from the operation of solid waste facilities shall be disposed of in a manner that will not cause surface water or groundwater pollution.” *Id.* It goes on to state that a landfill’s owner or operator may either send such liquids off site to an authorized facility or “shall provide for the treatment of wastewaters resulting from managing the waste or from cleaning and washing. The owner or operator *shall not discharge contaminated water without specific written authorization.*” *Id.* (emphasis added). Rather, the owner or operator must dispose of liquid wastes through “a connection into a public sewer system, a septic system, or a small wastewater treatment plant.” Texas’s Administrative Code also specifically requires landfill owners and operators to collect and contain contaminated water and leachate “until properly managed.” 30 TAC § 330.207(b). It specifies that landfills may discharge contaminated waters offsite “only after approval under the [TPDES] authority.”

### **Factual Background and the CWA Violations**

TDS operates a landfill near the city of Austin, located at 3606 FM 1327, Buda, TX 78610 (landfill & recycle center) and 12200 Carl Rd., Creedmoor, TX (on-site sewage facility). TDS’ 1988 permit application was for a Municipal Type I waste disposal facility adjacent to FM Highway 1327, Carl Road, and Old Lockhart Road and located 50 feet from

the nearest occupied structure. [PIR 807].<sup>3</sup> The facility collects the following types of wastes: commercial, residential, compostable, and class II and III industrial. [PIR 823]. The facility was designed to collect less than 1% of “special wastes” requiring specific management or disposal procedures.

The application projected an average waste generation rate of approximately 2,195 tons per day and existing land uses within one mile of the site at the time of the application were primarily agricultural in nature, interspersed with approximately 100 scattered rural residences. [PIR 811]. Approximately 27 of those are located within a quarter mile of the landfill, with the nearest six situated approximately 50 feet to the east. [PIR 815-816].

Creedmoor-Maha Water Supply Corporation provides almost all of the domestic water for the area. [PIR 816]. Two Creedmoor-Maha Water Supply Corporation water storage and distribution facilities are near the landfill: one 400 feet to the south and one 0.6 miles to the northwest [PIR 815], and the company’s nearest domestic supply well is 3.8 miles west of the landfill: the well is 450 feet deep and draws from the Edwards Aquifer. [PIR 816]. The southern half of the site area drains toward an intermittent tributary of Maha Creek, while the northern half of the site drains toward Marble Creek. [PIR 816].

The landfill generates leachate, which percolates down through the landfill and is polluted by the various materials it contacts as it does so. TDS’s landfill, although permitted for a leachate *collection* system,<sup>4</sup> lacks any permits for the *disposal* of leachate and industrial wastewater. Indeed, the permit application itself states that leachate would “not be discharged without specific written authorization,” that excess contaminated water would be temporarily stored or properly treated or disposed, and that only non-contaminated water could be sent to diversion ditches for offsite discharge [PIR 393-94]. The application affirmed that all surface water discharges would “be in compliance with NPDES requirements.” *Id.*

Upon information and belief, TDS is disposing of landfill leachate and industrial wastewater without a NPDES or TPDES permit through (1) an unlined, unpermitted<sup>4</sup>

---

<sup>3</sup> Page references are to TCEQ’s response to PEER’s public information act request.

<sup>4</sup> While TDS *may* have authorization for on-site ponds that *collect* leachate through its Waste Permit, these ponds lack a TPDES permit allowing for the *disposal* of the polluted materials. An evaporation pond can be a permitted through the TPDES program, but would require proper lining, periodic water sampling, and periodic inspections – all features that the onsite ponds lack.



evaporation pond or ponds on the site; (2) an OSSF system intended for domestic wastewater from the office only; and (3) direct application onto the grounds around the landfill. PEER is in possession of photographs and video footage taken in 2017 from outside TDS's property plainly showing multiple areas where foamy scummy water is coming off TDS's site into ditches that convey it into waters of the state. Although National Oceanic and Atmospheric Administration weather records reveal there were only trace amounts of precipitation for the several days before the photos were taken, wetland vegetation is clearly visible, strongly suggesting that the evidently voluminous amount of water coming from TDS's site is not merely stormwater, but includes leachate and industrial wastewater. One of these wetland areas potentially containing contaminants appears to lie a short distance from a residential home next to the TDS property. The photographs show pipes in some areas that appear to be leading from industrial buildings on TDS's site to a ditch that flows to waters of the state. The wetland areas in the photographs have been observed to be wetland also during times of drought, further indication that the water in them coming from TDS's site is not stormwater.

When PEER informed TCEQ that it could not find a TPDES permit on file for TDS's landfill covering the disposal of collected leachate and industrial wastewater, TCEQ stated its belief that this information would be contained within TDS's Municipal Solid Waste Permit No. 2123. On September 14, 2016 PEER submitted a Public Information Request to TCEQ for:

- (1) Municipal Solid Waste (MSW) Permit No. 2123 issued to Texas Disposal Systems*
- (2) The original application for this permit*

There is no TPDES permit within the responsive records TCEQ provided, nor could we find anything within the records showing that TDS is permitted to dispose of landfill leachate and industrial wastewater onsite. The landfill is not connected to any public wastewater system, nor does it have a NPDES permit covering these activities. It has only an onsite septic facility ("OSFF") which is supposed to accept domestic uses only – not industrial uses or landfill leachate. *See* 30 TAC § 285.3(g)(2). We believe from the photographs and video footage we possess that this septic system may be transmitting polluted water into waters of the state.

### Conclusion

TDS's failure to obtain a TPDES permit for the disposal of landfill leachate and industrial wastewater has caused and is causing and contributing to degradation of waters of the United States. PEER and its members will continue to be injured until TDS and its respective agents and officers fully comply with the CWA.

Should TDS and its respective agents fail to remedy these violations within 60 days of receipt of this letter, PEER intends to commence a civil action in the appropriate federal court to see that the CWA is properly enforced. Title 33 U.S.C. § 1365(a) of the CWA authorizes the district court, without regard to the amount in controversy or the citizenship of the parties, to enforce the requirements of the Act and apply appropriate penalties of up to \$37,500 per day for each violation. 33 U.S.C. § 1365(a), § 1319(d); 40 C.F.R. § 19.4. PEER will request attorney fees, remediation, and any other appropriate relief.

During the 60-day notice period we will be willing to discuss effective remedies for the violations noted herein. If you wish to pursue a settlement, we suggest that you initiate those discussions within ten (10) days of receiving this notice so that negotiations can be completed before the expiration of the 60-day period. Please direct any response to this notice of intent to sue using my contact information below.

Sincerely,



Adam Carlesco, Staff Counsel  
*Public Employees for Environmental Responsibility*  
962 Wayne Ave, Suite 610  
Silver Spring, MD 20910  
Office: 202.265.7337 / Direct: 240.247.0298  
Email: acarlesco@peer.org